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Ontario. Labour Relations
Board
Analysis of representation
votes...



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CONDUCTED BY THE ONTARIO LABOUR RELATIONS BOARD

APRIL 1ST, 1955 - MARCH 31ST, 1957 *1957*

The following Tables set forth information requested by the Committee concerning representation votes conducted by the Board over a period of two fiscal years in certification and termination cases.

1. Frequency of Representation Votes in Certification Cases

As appears from Table 1, a representation vote was directed in approximately one-seventh of the applications for certification disposed of by the Board during the period under review. Applications in which no vote was directed were disposed of by the Board on the basis of the documentary and oral evidence presented to the Board by the parties.

TABLE 1.

Representation Votes in Certification Applications Disposed of by the Board

April 1st, 1955-March 31st, 1957

Fiscal Year	Applications for Certification Disposed of	Number of Representation Votes taken in Cases Disposed of	Representation Votes as Percentage of Applications Disposed of
1955-1956	864	141	16.3
1956-1957	1057	159	15.0
Two-Year TOTALS	1921	300	15.6

2. Choice Offered in Representation Votes

Where one trade union applies for certification as bargaining agent for employees who are not at the time represented by another trade union and a representation vote is directed by the Board, the ballot offers the voters a choice between the applicant union and no union. Such a ballot is commonly referred to as a "Yes-No" ballot. Where there is a contest between two trade unions, both of whom seek certification for all or some of the same group of employees, and the employees are not at the time represented by any other trade union, the employees will be offered a choice between the two trade unions seeking certification. Such a ballot is commonly referred to as a "Two-Way" ballot. Where a trade union seeks to displace an incumbent union, i.e., the union which is at the time the recognized bargaining agent for the employees, the employees will be offered a choice between the applicant union and the incumbent union. The applicant trade



Representation Votes: Choice between Union and No Union

April 1st, 1955 - March 31st, 1957.

	1955-1956			1956-1957		
	Total	Granted	Dismissed	Total	Granted	Dismissed
(a) Mandatory votes where no employee objections filed	27	16	11	29	14	15
(b) Mandatory votes where employee objections filed	11	4	7	11	6	5
(c) Discretionary votes where employee objections filed	27	7	20	21	9	12
(d) Other	10	8	2	2	1	1
TOTAL	75	35	40	63	30	33

The last group of cases in Table 3, designated as "Other", are cases in which a representation vote was directed because of special circumstances. For example, an application may be filed by a union in respect of employees in a seasonal industry at a time when the number of employees in the appropriate unit is well below the number that would normally be in the unit at the height of the season. In such cases, the Board frequently directs that a representation vote be taken when a substantially representative group of employees is employed despite the fact that the application union may have membership in excess of 50% of the employees who comprise the unit at the time of the application.

Where two unions seek certification for some or all of the employees in one bargaining unit and both have satisfied the minimum requirements as to membership set by subsection 2 of section 7 of The Labor Relations Act, the Board normally directs that a representation vote be taken. The two unions seeking certification may both wish to be certified as bargaining agent for the same bargaining unit or one may seek certification as bargaining agent for a part of the unit sought by the other. In the period under review, in each of the seven applications which fell into this category (see Table 2), the two interested unions both sought certification for the employees in the whole of the bargaining unit, i.e., there was no contest between an industrial union and a craft union, the latter seeking to serve a craft unit out of a larger industrial unit. However, cases of this nature have arisen both before and after the period under review.

where an incumbent union enjoys bargaining rights on behalf of a unit of employees, another union may seek to displace the incumbent as bargaining agent for the whole unit represented by the incumbent or for part of that unit. The latter situation usually arises where a craft union seeks certification as bargaining agent on behalf of the employees in a craft group represented at the time of the application for bargaining purposes by the incumbent union, which is generally speaking in such circumstances an industrial union. Unless the incumbent union informs the Board that it has abandoned its bargaining rights, either in whole or for those employees who are claimed by the applicant union, the Board will normally direct that a representation vote be taken. Table 4 gives a distribution of representation votes in displacement cases in terms of total and partial displacement of an incumbent union.

Representation Votes where Challenge between Applicant and Incumbent Unions

April 1st, 1955 - March 31st, 1957

	1955-1956			1956-1957		
	TOTAL	Unions	Unaffiliated	TOTAL	Unions	Unaffiliated
Total displacements	31	21	10	43	34	9
Partial displacements	20	24	4	46	41	5
TOTAL	51	45	14	89	75	14

During the fiscal year 1955-1956 approximately 40% and during the fiscal year 1956-1957 approximately 25% of the total displacement cases listed in Table 4 involved attempts by unions affiliated with one or other of the two major labour federations to displace employees' associations. With a few exceptions, the other total displacement cases involved (a) attempts by affiliates of one of the major labour federations to displace the affiliates of the other major labour federation (there were no cases of this nature in the fiscal year 1955-1956, i.e., following the date of the merger convention between The Trades and Labour Congress of Canada and the Canadian Congress of Labour; cf., however, next paragraph); (b) attempts by unaffiliated national or international trade unions to displace affiliates of the two major labour federations or vice versa; and (c) transfers of jurisdiction by one or other of the major labour federations of a federation chartered local to the appropriate international organization. The need for this type of application has been largely obviated by section 146 of the Labour Relations Act (successor statute) added to the Act in 1950.

During the period 1955-1956, 18 applications for partial displacement were made by the International Union of Operating Engineers and 9 by the National Union of Operating Engineers. In 1956-1957, these two unions again accounted for the majority of applications under this head; the International Union of Operating Engineers made 36 applications and the National Union of Operating Engineers 7 applications.

Subsection 3 of section 7 of The Labour Relations Act provides that, where a representation vote is direct, a union is to be certified if more than 50% of all those eligible to vote cast their ballots in its favour, employees who are absent from work during voting hours and who do not cast their ballots not being accounted as eligible (subsection 3(3)). Table 5 sets out the result of the balloting in marginal cases in the period under review. It should be noted in this connection, as appears from Table 1, that there were 227 representation votes in the two fiscal years covered by this Analysis.

TABLE 5.

Marginal Votes in Certification Cases

April 1st, 1955 - March 31, 1957

<u>Case #1.</u>	Number of eligible voters		77
	Number of ballots cast	16	
	Number of ballots marked in favour of applicant	10	
	Number of ballots marked as opposed to applicant	6	
<u>Case #2.</u>	Number of eligible voters		72
	Number of ballots cast	32	
	Number of ballots marked in favour of applicant	32	
	Number of ballots marked as opposed to applicant	22	
<u>Case #3.</u>	Number of eligible voters		110
	Number of ballots cast	115	
	Number of ballots marked in favour of applicant	60	
	Number of ballots marked as opposed to applicant	54	
	Number of ballots spoiled	1	
<u>Case #4.</u>	Number of eligible voters		113
	Number of ballots cast	101	
	Number of spoiled ballots	1	
	Number of ballots marked as opposed to applicant	43	
<u>Case #5.</u>	Number of eligible voters		72
	Number of ballots cast	28	
	Number of ballots marked in favour of applicant	18	
	Number of ballots marked as opposed to applicant	10	
<u>Case #6.</u>	Number of eligible voters		71
	Number of ballots cast	28	
	Number of ballots marked in favour of applicant	18	
	Number of ballots marked as opposed to applicant	10	

Case #7.	Number of eligible voters		26
	Number of ballots cast		27
	Number of ballots segregated and not counted		1
	Number of ballots marked in favour of applicant		13
	Number of ballots marked in favour of incumbent		13
Case #8.	Number of eligible voters		1
	Number of ballots cast		2
	Number of ballots marked in favour of applicant		2
	Number of ballots marked in favour of incumbent		2

5. Representation Votes in Termination Cases

During the period under review, where an application for termination of bargaining rights was made by employees under section 41 of The Labour Relations Act, and the applicant satisfied the minimum requirements of that section, the Board was required to direct that a representation vote be taken. Section 43 of the Act in 1957 to provide that no vote need be taken on such an application where the incumbent union notifies the Board in writing that it does not desire to continue to represent the employees in the bargaining unit. In so far as applications for termination of bargaining rights under section 43 of The Act are concerned, it lies in the discretion of the Board to determine whether a representation vote should or should not be held. Table 6 provides information on the frequency of representation votes in termination cases and Table 7 analyzes such votes in terms of whether the applicant was an employee or a group of employees of the same kind, or an employee of the other kind.

TABLE 6

Frequency of Representation Votes in Termination Cases

April 1st, 1953 - March 31st, 1957

Fiscal Year	Applications for Termination Disposed of	No. of Representation Votes taken in Cases Disposed of	Representation Votes as Percentage of Applications Disposed of
1953-54	22	14	36.5
1954-55	26	8	28.2
Two-Year Totals	48	22	31

TABLE 7.

Representation Votes in Termination Cases Classified by Applicant
April 1st, 1955-March 31st, 1957.

	1955-1956			1956-1957		
	Total	Terminated	Not Terminated	Total	Terminated	Not Terminated
Applications by employees	17	16	1	8	7	1
Applications by employers	2	2	0	0	0	0
TOTALS	19	18	1	8	7	1

There were no marginal cases in representation votes directed termination cases disposed of during the fiscal years 1955-1956 and 1956-1957.

How Many Eligible Voters Exercise their Right to Vote?

As appears from Table 8, in the 300 representation votes referred to certification cases in the period under review, there are only 19 instances in which the number of ballots cast fell below 90% of the number of eligible voters. In 14 of these 19 instances, certification was granted. In other words the applicant obtained in excess of 70% of the votes of all eligible voters. The results of the balloting in four of the remaining five cases appear in Table 5, supra, - see cases #1, #2, #5, and #6, Table 5. - The results of the balloting in the other cases are as follows: persons eligible to vote, 3 voted for the applicant union, against the applicant union, and 3 persons did not vote.

TABLE 8.

Percentage of Eligible Voters who Cast BallotsApril 1, 1955-March 31, 1957.

Percentage of Voters	1955-1956			1956-1957		
	Total	Granted	Disallowed	Total	Granted	Disallowed
100	114	69	45	114	83	31
50-75	20	13	7	25	16	10
25-50	1		1	6	4	2
Below 25%	5	5	1	13	9	4
TOTAL	141	87	54	159	109	50



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